

**IN THE COURT OF APPEALS OF IOWA**

No. 3-1228 / 13-1739  
Filed January 9, 2014

**IN THE INTEREST OF X.J.,  
Minor Child,**

**P.I., Father,  
Appellant.**

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Appeal from the Iowa District Court for Polk County, Constance C. Cohen,  
Associate Juvenile Judge.

The father appeals the termination of his parental rights to his child, X.J.

**AFFIRMED.**

Yvonne C. Naanep, Des Moines, attorney for appellant father.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant  
Attorney General, John P. Sarcone, County Attorney, and Andrea Vitzthum,  
Assistant County Attorney, for appellee State.

Kimberly Ayotte of the Youth Law Center, Des Moines, attorney and  
guardian ad litem for minor child.

Considered by Vogel, P.J., and Mullins and McDonald, JJ.

**VOGEL, P.J.**

The father appeals the termination of his parental rights to his child, X.J., (born 2007), asserting the Department of Human Services (DHS) failed to comply with the relative notice requirements of Iowa Code section 232.84 (2013). The father argues that, because X.J. can potentially be placed with his great aunt, pursuant to Iowa Code section 232.116(3)(a) his parental rights should have been preserved. He further asserts termination was not in X.J.'s best interest. We conclude error was not preserved with respect to the argument regarding the relative notice requirement. Furthermore, because the juvenile court correctly found relative placement was not applicable at the current time, and termination is in the child's best interest, we affirm.

**I. Factual and Procedural Background**

X.J. and her siblings first came to the attention of DHS in April of 2012 due to allegations of the mother's drug abuse and being abused by a paramour. The father was living in Georgia. The mother consented to the removal, and the children were placed with relatives.<sup>1</sup> On August 21, 2012, X.J. and her siblings were adjudicated children in need of assistance pursuant to Iowa Code sections 232.2(6)(b), (c)(2), and (n) (2011). The juvenile court ordered DHS to pursue interstate compact on the placement of children (ICPC) in Georgia for potential placement of X.J. with the father, and also ordered any contact between X.J. and the father be with X.J.'s therapist's approval.

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<sup>1</sup> The children were moved three more times until their current placement in foster homes.

The father initially wanted to be considered as a concurrent plan for all the children, but as the juvenile court noted, he “was not demonstrating consistent participation in family contact and other services.” For example, he declined to travel to Iowa to visit X.J. and also missed phone call opportunities. Additionally, the father did not provide his actual home address so ICPC services could evaluate the home. He did, however, suggest X.J. could be placed with his great aunt and provided her address.

The father admitted to substance abuse issues, specifically, he stated he did not foresee problems with parenting while using marijuana. He also currently has an active arrest warrant for a drug charge and is on Henry County Georgia’s Most Wanted List. His criminal history includes convictions for theft, receiving stolen property, burglary, using a weapon in the commission of a felony, possession of drugs, and driving while suspended. He also served time in prison for robbery in 2004.

On July 9, 2013, the State petitioned the court to order termination of parental rights as to all parents. Testifying via telephone at the hearing, the father admitted he was not able to assume custody of X.J. because of “a little legal thing” he had to settle first, and requested X.J. be placed with his great aunt. The great aunt attended the termination hearing but also admitted she has not established any sort of relationship with X.J. On October 21, 2013, the juvenile court terminated the father’s parental rights pursuant to Iowa Code sections 232.116(1)(d) and (f) (2013).<sup>2</sup> The father appeals.

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<sup>2</sup> The court also terminated the parental rights of the mother and the fathers of the other children, but only the father of X.J. appeals.

## II. Standard of Review

We review termination proceedings de novo. *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999). The grounds for termination must be proved by clear and convincing evidence. *Id.* Our primary concern is the child’s best interest. *Id.*

## III. Relative Notice Requirement

“The doctrine of error preservation has two components—a substantive component and a timeliness component.” *State v. Krogmann*, 804 N.W.2d 518, 523 (Iowa 2011). To preserve error on appeal, the party must first state the objection in a timely manner, that is, at a time when corrective action can be taken, in addition to the basis for the objection. *Id.* at 524. The court must then rule on the issue. *Lamasters v. State*, 821 N.W.2d 856, 864 (Iowa 2012). “If the court’s ruling indicates that the court *considered* the issue and necessarily ruled on it, even if the court’s reasoning is ‘incomplete or sparse,’ the issue has been preserved.” *Id.* (quoting *Meier v. Senecaut*, 641 N.W.2d 532, 540 (Iowa 2002)).

Neither the termination order nor the transcript referenced the requirements of Iowa Code section 232.84 regarding relative notice requirements. Therefore, the juvenile court did not consider the argument the father now presents on appeal, and error is not preserved. Consequently, we decline to address the merits of this claim.

## IV. Relative Placement

Iowa Code section 232.116(3)(a) states: “The court need not terminate the relationship between the parent and child if the court finds . . . A relative has legal custody of the child.” This section is permissive rather than mandatory, that is, it is within the juvenile court’s discretion to decline to terminate parental rights if

any of the factors in subsection three are present. See *In re P.L.*, 778 N.W.2d 33, 41 (Iowa 2010).

With regard to placing X.J. with the father's great aunt, the juvenile court stated:

While [Ms. S] was impressive when testifying, and appears to have a stable lifestyle, [the father] is the parent. It speaks volumes that he no longer requests the second ICPC home study for himself, but instead wants to abdicate his parenting role to [Ms. S]. DHS should pursue placement with [Ms. S] via ICPC. But in light of [the father's] lack of hands on parenting and his current legal situation, even if [X.J.] were placed in the care of [Ms. S] or another relative, this possible relative placement sometime in the non-foreseeable future does not support a finding that there is an exception to termination being in the child's best interest due to relative placement.

We agree with the juvenile court's assessment. Beyond the fact the considerations listed in subsection three are permissive rather than mandatory, a possible relative placement sometime in the future does not outweigh the father's lack of participation in the juvenile proceedings, his criminal history, and his substance abuse issues such that termination of his parental rights need not occur. Consequently, we conclude the juvenile court correctly found termination was appropriate and the relative-placement consideration in subsection three should not apply.

## **V. Best Interest**

The father summarily argues termination is not in X.J.'s best interest. However, X.J., along with her three half-siblings, have moved four times since the beginning of DHS's involvement in the case. The father has declined to participate meaningfully in services or even visit X.J. His criminal history—including his current legal problems—as well as his substance abuse issues are

of great concern. See *In re A.B.*, 815 N.W.2d 764, 778 (Iowa 2012) (the parent's past conduct is instructive in determining his future behavior). Additionally, X.J. is currently in a stable placement with her foster parents, and according to her therapist, has made significant improvements. It is well past time she had stability and permanency in her life. Therefore, termination of the father's parental rights is in her best interest, and we affirm the juvenile court.

**AFFIRMED.**